IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14452 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MINIBEN RAMABHAI WIDOW OF THE

Versus

THE SUPERINTENDING ENGINEER

Appearance:

MR MD RANA for Petitioner

Mr.H.H. Patel, A.G.P. instructed by M/S. Patel Advocates for Respondents

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CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 22/09/2000

ORAL JUDGEMENT

By this petition, under Art. 226 of the Constitution of India, the petitioner, who is widow of the deceased, employee of the Government, seeks to challenge inaction

of the Government, in not responding and affording to her an opportunity for her grievances about the grant of family pension.

The husband of the petitioner was appointed as unskilled labourer on work-charge basis by the Deputy Executive Engineer, Keshod, who worked up to 1st August 1990, when he died while in service. Petitioner has contended that, her deceased husband had completed almost service of 10 years and he was given benefit of the Govt. Resolution dtd. 17th October 1988. It is the case of the petitioner that, pursuant to the resolution of the Government, the family pension is available to her as deceased had put in more than 7 years service when he died.

The deceased was placed, by virtue of the Government Resolution, in the consolidated salary of Rs.740/- and was conferred other benefits. The Executive Engineer had addressed a letter to the Superintending Engineer, Respondent No.1, on 6th December 1991, highlighting the length and event of the service particulars of the deceased. The petitioner, also, received the gratuity Rs.4617/-. The petitioner had, also, made several representations for compassionate appointment as well as, grant of family pension. However, there was no any action taken by the Department. Looking to her contention, she has to depend on the family pension as she has no other independent means of her livelihood. Since the Respondent Authority failed to take decision, she was left with no alternative but to resort to the legal battle, hence, this petition.

Unfortunately, the respondents have not filed any counter or affidavit. No any reasonable explanation is placed on the record, as to why it has not been done. When the matter was called out, today, the Learned Advocate Mr.MD Rana, for the petitioner and Learned AGP Mr. HH Patel, were present and they offered their submissions. It appears, unfortunately, the petitioner widow of the deceased employee, Ramabhai, is done injustice by the Department.

In the facts and circumstances, widow is found entitled to the family pension, in view of the documentary evidence produced on record, which has remained unchallenged. Deceased Ramabhai Laxmanbhai had also put in services of nearly 10 years he was in service as casual labourer in the Public Works Department (P.W.D.) since 21st November, 1979 and remained so till he died on 1.08.1990. The respondent No. 2, Executive Engineer

passed an order for the grant of gratuity on 5.12.1991. The copy whereof, is placed at annexure "A". The deceased was casual labourer for a long period of more than 9 years and thereafter, he was put in fixed salary of Rs.750/- and he continued in the same post and position till he died on 1.8.1990.

The reliance is placed on Government Resolution dtd. 17.10.1988 of the R & B, State of Gujarat. It is not disputed that minimum amount of family pension, when the deceased Ramabhai Laxman died was fixed at Rs.632/-. Pursuant to the Government Resolution, it is also, not disputed that the unskilled labourer working temporarily or on casual basis for more than 5 years, but less then 10 years were in the consolidated monthly salary of Rs.750/- on the basis of casual labourer. It is, also, not disputed that the family pension was available and permissible after the completion of 7 years service and death, while in service occurs. The right of family pension in such case was as per the Schedule-A of said G.R.

The reliance is, also, placed on the decision of this Court in SCA No. 4949 of 1986 rendered on 23.06.2000. The copy of the said judgment is examined and it supports the case of the present petitioner. In absence of any affidavit-in-reply, or counter and considering the relevant resolutions of the Government, the petitioner is entitled to the family pension as per the Government Rules. The amount of gratuity has, already, been paid.

In the facts and circumstances of the case, the respondents are directed to consider the case of the petitioner for family pension in the light of the resolution of the Government and to fix the family pension as per the rules, the right of family pension, available to the petitioner and fix from time to time within a period of 8 weeks from today. Petition is therefore, allowed. Rule made absolute with cost.

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